O.A.No.77 of 2007 and A.208 of 2007 in
C.S.No.46 of 2007
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The plaintiff / applicant has filed a suit for,
i)a declaration which is incapable of valuation due to the reason that the power obtained by the defendants 1 and 2 dated 17.08.2004 and registered as Doc.No.1977/2004 at SRO, Virugambakkam, is null and void and the consequential prayers to declare the sale deed executed on 15.04.2005 for the suit schedule mentioned property and registered as Doc.No.345 of 2005 at SRO, Sowcarpet as null and void. These two documents cannot be valued due to the reason that the prayer is to declare a document as null and void as the document dated 17.08.2004 obtained by the defendants 1 and 2 forcibly under threat, coercion, undue influence. Hence these prayers cannot be valued and valued at Rs.1,000/- and pays a Court fee of Rs.75/- as per Sec.25(d) of Tamil Nadu Court Fees and Suits Valuation Act. As the power dated 17.08.2004 has been obtained by force and threat by the defendants 1 and 2 and consequence of it any document executed by Defendants 1 and 2 also becomes null and void. The consequential prayer also cannot be valued. The power has been obtained forcibly and these documents cannot be valued. In law, these documents do not have any value. Any document obtained subsequent to the power also becomes null and void. The Power of Attorney and sale deeds cannot be evaluated as power has been obtained only by force and threat.

ii)Damages against the defendants 1 to 3, in particular the defendants 1 to 3 at Rs.30,000/- per month from March 2005 for mental agony, suffering, torture caused by the defendants both mentally and physically and hence the plaintiff is entitled for damages. Further defendants prevented the plaintiff from enjoying her legitimate right over the property. The defendants made the plaintiff to suffer from all walks of life. The plaintiff being deprived of her rights entitled for damages in view of the submissions already made at the rate of Rs.30,000/- per month. Even though plaintiff is entitled from March 2004, but now claiming from March 2005 at Rs.30,000/- per month and future damages also claimed till the date of decree and realisation and restoration of the property to the plaintiff. The total damage comes to Rs.10,20,000/- till now. The Court fee paid is a sum of Rs.13,725/- as per Sec.22 of Tamil Nadu Court Fee and Suits Valuation Act, 1955.
iii)A declaration of title and delivery of possession of the schedule suit properties and valued at Rs.45,50,000/- and shall pay the Court Fee of Rs.49,025/- under Sec.25(a) of the T.N.C.F. & S.V.Act, 1955.

iv)Permanent injunction restraining the defendants 3 from dealing with the property in any manner by way of sale, lease and creating any encumbrance or any mode of conveyance and also restraining them by collecting rents for the suit schedule property and valued at Rs.1,000/- as it is incapable of valuation and pays a Court Fee of Rs.75/- under Section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act, 1955.
2. It is pleaded case of the plaintiff / applicant that two registered power of attorneys were executed by the plaintiff in favour of defendant nos. 1 & 2. The power of attorney holders of the plaintiff / applicant sold the property to defendant nos.3 to 6. The possession of the property was also handed over to the Vendee, who are in possession of the property, by virtue of sale.

3. As already observed above, the suit has been filed for declaration that sale deeds, executed in favour of defendant nos. 3 to 6 are illegal and null and void and not binding on the rights of the plaintiff / applicant, being outcome of fraud.

4. The pleaded case of the plaintiff / applicant is that the defendant nos. 1 & 2 had kidnapped the plaintiff / applicant and she was forced to execute the power of attorney in their favour. The attorney holders, after sale, did not pass on the sale consideration to the applicant / plaintiff.
5. The stand of defendant nos. 1 & 2 is that the sale consideration was passed on to the plaintiff. In

support thereof, defendant nos.1 & 2 have produced on record receipts for proof of receipt of money by the plaintiff.

6. In C.S.No.46 of 2007, the following applications were filed:

i) O.A.No.77 of 2007 - To grant an order of interim injunction restraining the respondents, their men, agents, servants or anyone acting them in dealing with the property in any manner by way of sale lease and any kind of charge for the suit schedule property bearing Door No.27, Stringers Street, George Town, Chennai, pending disposal of the suit.

ii) A.208 of 2007 - To direct the Garnishees / respondents 7 to 17 herein to deposit the accrued monthly rents from February 2004 to till now and also future rents to the credit of the above suit in respect of suit schedule mentioned property, pending disposal of the suit and thus render justice and in alternative, the Garnishees may be directed to make rental payments to the applicant / plaintiff.

7. On consideration of the matter, I find that the plaintiff / applicant is not entitled to interim reliefs, as prayed for, in O.A.No.77 of 2007 and A.208 of 2007.

8. Once it is not disputed that the power of attorney, was executed by the plaintiff / applicant, whether it is outcome of fraud or misrepresentation or whether applicant was forced to sign the power of attorney, is question to be decided after parties lead evidence. In the event of success, it will always be open to the Court to grant relief, in view of settled law that fraud vitiates everything, and that this Court, in exercise of inherent jurisdiction, can pass any order to do justice to the aggrieved party.

9. As on date, defendant nos. 3 to 6 are the registered owners of the property, who have purchased it for consideration, therefore, cannot be restrained, specially when any transaction or alienation will be subject to "lis pendens" where the rights of the plaintiff / applicant will be duly protected.

10. Interim relief can only be granted to maintain status quo, and cannot be used as a mean to harass defendants, for some other consideration

11. The plaintiff / applicant, in order to succeed in prayer for interim injunction, has not only to prove prima facie case, but also require to prove balance of convenience and irreparable loss or injury.

12. In this case, the plaintiff / applicant failed to make out any prima facie case nor are likely to suffer irreparable loss or injury, in view of the protection under "lis pendens".
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13. Furthermore, balance of convenience also cannot be said to be in favour of the plaintiff / applicant, as defendant nos.3 to 6 are admittedly registered owners of the property, having purchased it for consideration. As already observed, it cannot be said that the applicant will suffer irreparable loss, if injunction is not granted, as "lis pendens" transferee steps into the shoes of his vendor and thus is bound by the decree.

14. Consequently, finding no merit in all these applications, they are ordered to be dismissed.

22.11.2011
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Note: Issue order copy on 01.12.2011

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